

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

DONALD T. SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:15-cv-03472

UNITED STATES OF AMERICA, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

On March 23, 2015, the Plaintiff filed his *Complaint* (Document 1) in this matter. Subsequently, on June 15, 2015, the United States filed the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 21).

By Orders entered on March 23, 2015, and January 6, 2016 (Documents 2 and 30), this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On January 19, 2016, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 32) wherein it is recommended that this Court grant the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*, dismiss the Plaintiff's *Complaint*, and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by February 5, 2016.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 21) be **GRANTED**, the Plaintiff's *Complaint* (Document 1) be **DISMISSED**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: February 11, 2016

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA